

IN THE UNITED STATES DISTRICT COURT RECEIVED  
FOR THE MIDDLE DISTRICT OF ALABAMA MAR 28 A 9:49  
NORTHERN DIVISION

TONY MURRAY, #129256

Plaintiff,

V.

MS. VELINDA WETHEHERLY.

CASE NO. 2:05-CV-1240 MEF

MOTION AND OPPOSITION  
TO DEFENDANT SPECIAL REPORT.

FROM THE UNITED STATES MAGISTRATE JUDGE ORDER DATE, MARCH 2, 2006, and MARCH 6, 2006.

THE UNITED STATES MAGISTRATE JUDGE ORDERED THE DEFENDANTS RESPONSE TO THE COMPLAINT. THE JUDGE ORDER READS: ORDER FOR GOOD CAUSE, IT IS

ORDERED THAT ON OR BEFORE MARCH 16, 2006 DEFENDANT WETHEHERLY SHALL FILE AN AFFIDAVIT REGARDING HER KNOWLEDGE OF THE SUBJECT MATTER OF THE INSTANT COMPLAINT AND ANY EVIDENTIARY MATERIAL SHE DEEMS PERTINENT IN RELATION THERETO. SEE MAGISTRATE JUDGE ORDER DATE MARCH 2, 2006. (THEREAFTER THE DEFENDANT VELINDA WETHEHERLY FILED HER SPECIAL REPORT WITHOUT AFFIDAVIT REGARDING HER KNOWLEDGE OF THE SUBJECT MATTER OF THE INSTANT COMPLAINT AND DID NOT PRESENT ANY EVIDENTIARY MATERIAL SHE DEEMS PERTINENT IN RELATION THERETO, (SEE DEFENDANT SPECIAL REPORT))

THE Magistrate Judge thereafter  
 ORDERED the Plaintiff, which the order reads,  
 THE Magistrate Judge has Reviewed THE Special Report  
 and supporting Evidentiary Materials Filed by the Defendant,  
 Report Supporting, (DOC. NOS 5, 7,) AND determined THAT  
 Plaintiff must file A Response in opposition TO such pleadings,  
 Accordingly, IT IS ORDERED THAT on or before March 27, 2006  
 Plaintiff shall file A Response TO THE WRITTEN Report (SEE  
 THE Magistrate JUDGE ORDER Date March 6, 2006)"

THE COURT ORDER STATES, IF PLAINTIFF  
 FAILS TO FILE A RESPONSE AS REQUIRED  
 BY THIS ORDER, THE COURT WILL TREAT THE  
 FAILURE TO RESPOND AS AN ABANDONMENT  
 OF THE CLAIMS SET FORTH IN THE COMPLAINT  
 AND AS A FAILURE TO PROSECUTE THIS ACTION  
 (SEE Magistrate Judge order Date March 6, 2006)

THE DEFENDANT VELINDA WEATHERLY SPECIAL REPORT ALLEGED. MURRAY  
 ALLEGES THAT WEATHERLY MADE STATEMENTS DURING A PAROLE HEARING  
 TO THE EFFECT THAT MURRAY "Ran" THE PRISON WHERE HE IS  
 CONFINED and THAT THE PRISON GUARDS ARE AFRAID OF HIM.  
 MURRAY CONTENDS THAT THIS DEPRIVED HIM OF LIBERTY WITHOUT  
 AFFORDING HIM DUE PROCESS OF LAW BY DEPRIVING HIM OF A "Fair"  
 CHANCE AT PAROLE. (SEE THE SPECIAL REPORT ON PAGE 1.)

THE Plaintiff understanding THE Right to a Parole is A Privilege granted by the People of Alabama TO THOSE COMMITTED TO PENAL INSTITUTIONS AS PUNISHMENT FOR CRIMES. SEE *Ellard v. State*, 474 SO.2d 743 (Ala., CRIM, App. 1984), *Aff'd*, 474 SO.2d 755 (Ala. 1985).

THE Plaintiffs understands Alabama Parole statutes Do NOT CREATE A "liberty" "INTEREST" ENTITLED TO PROTECTION UNDER DUE PROCESS CLAUSE OF EITHER THE UNITED STATES OR THE STATE CONSTITUTION. *ELLARD v. STATE*, 474 SO.2d 743 (Ala., CRIM. App. 1984), SEE *ELLARD v. Alabama Bd. of Pardons and Paroles*, 824 F.2d 937 11th Cir, 1987 CERT, DENIED, 485 US, 981, 108 S. CT, 1280 99 L. Ed. 2d 491 (1988).

THE DEFENDANT WEATHERLY ARGUES THAT MURRAY IS SEEKING MONETARY DAMAGES FROM WEATHERLY FOR ACTIONS TAKEN ON THE BENCH DURING THE HEARING HELD TO DECIDE WHETHER PAROLE SHOULD BE GRANTED, SHE IS ABSOLUTELY IMMUNE FROM SUIT FOR THESE ACTS. (SEE SPECIAL REPORT AT P.1)

Plaintiffs understand THE Alabama Statute calls for DISCRETIONARY RATHER THAN MANDATORY ACTION ON THE PART OF THE Parole Board. THE LAW DIRECTS THE BOARD TO CONSIDER A NUMBER OF FACTORS IN MAKING THEIR DETERMINATION, WHICH, IS SUBJECTIVE RATHER THAN OBJECTIVE DETERMINATION. IT DOES NOT CONTAIN ANY LANGUAGE THAT MANDATES PAROLE WHEN THE STATUTE IS FRAMED IN DISCRETIONARY TERMS THERE IS NOT A LIBERTY INTEREST CREATED.

ELLARD V. STATE, 474 SO. 2d 958 (ALA. 1985), SEE ELLARD  
 V. Alabama Bd. of Pardon's and Paroles, 824 F. 2d 937  
 11th CIR, 1987, CERT, DENIED, 485 U.S. 981, 108 S. CT. 1280,  
 99 L. ED. 20 491 (1988).

THE DEFENDANTS SPECIAL REPORT STATED THAT NONE OF WEATHERLY'S  
 ALLEGED ACTIONS VIOLATE CLEARLY ESTABLISHED LAW.  
 A REASONABLE PAROLE BOARD MEMBER WOULD NOT KNOW THAT  
 IT IS UNCONSTITUTIONAL TO HAVE AN OPINION ABOUT A PRISONER  
 BASED ON HIS PRIOR HISTORY. SHE IS QUALIFIED TO AND  
 ENTITLED TO IMMUNITY. (SEE SPECIAL REPORT OF DEFENDANT AT P.1)  
 THE PAROLING AUTHORITY MUST COMPLY WITH CONSTITUTIONAL  
 REQUIREMENTS AND MAY NOT DETERMINE PAROLE ELIGIBILITY ON  
 IMPROPER GROUNDS. ANDRUS V. LAMBERT, 424 SO. 2d. 5 (1982)  
 PLAINTIFF MURRAY WAS DENIED FAIR DECISION FOR PAROLE  
 ON FALSE INSUFFICIENT, OR CAPRICIOUS REASONS, THE DEFENDANT  
 VELINDA WEATHERLY SUPPORTED FALSE INFORMATION, BOARD VIOLATED  
 DUE PROCESS, BOARD, BY RELYING ON FALSE INFORMATION IN A  
 PRISONERS FILE IN ORDER TO DENY HIM PAROLE IN A MINIMUM  
 SECURITY CLASSIFICATION, EXCEEDED ITS AUTHORITY UNDER THIS  
 SECTION AND TREATED HIM ARBITRARILY AND CAPRICIOUSLY IN  
 VIOLATION OF DUE PROCESS. MONROE V. THIGPEN, 932 F. 2d 1437  
 (11th CIR. 1991) PLAINTIFF MURRAY CLAIMING ALL WITNESSES  
 TESTIMONY OR STATEMENTS IN THE AFFIDAVIT THAT IS ATTACHED TO  
 THE PLAINTIFF RESPONSE TO THE DEFENDANT SPECIAL REPORT. THE DEFENDANT  
 WEATHERLY DID ENGAGE IN FLAGRANT OR UNAUTHORIZED ACTION.  
 MONROE V. THIGPEN, 932 F. 2d 1437 (1991)

THE DEFENDANT WEATHERLY RAILS TO SUPPORT ANY DISCIPLINARY RECORD. THE MAGISTRATE JUDGE'S ORDER STATED, IF PLAINTIFF FAILS TO RESPOND TO THE WRITINGS REPORT WITH RESPECT TO EACH OF THE CLAIMS RAISED IN HIS COMPLAINT, THE COURT WILL TREAT THIS AS AN ABANDONMENT OF THESE CLAIMS AND SHALL PROCEED AS JUSTICE REQUIRES. (SEE MAGISTRATE JUDGE ORDER AT P.I.). THE DEFENDANT ONLY SUPPORTED THREE PAGES SPECIAL REPORT THERE WAS NOT ANY AFFIDAVIT SUPPORTING PERSONAL KNOWLEDGE. SET FORTH SUCH FACTS AS WOULD BE ADMISSIBLE IN EVIDENCE, AND DID NOT SHOW AFFIRMATIVELY THAT AFFICANT IS COMPETENT TO TESTIFY TO THE MATTERS STATED IN THE AFFIDAVIT OR SPECIAL REPORT. (SEE PLAINTIFF AFFIDAVIT FROM HIS WITNESSES ATTACHMENT TO HIS OPPOSITION). EXH. "A"

THE PLAINTIFF IS REQUESTING THIS HONORABLE COURT AWARD PLAINTIFF HIS REQUEST IN HIS 42 U.S.C 1983 COMPLAINT.

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PLAINTIFF DECLARE UNDER PENALTY OF PERJURY THAT  
THE FOREGOING IS TRUE AND CORRECT (28 U.S.C. 1746)

EXECUTED ON MARCH 23, 2006

JOHN M. MURPHY # 129256

SIGNATURE OF PLAINTIFF(S)

THERE IS NO NOTARY PERSON AT THIS TIME AT  
EASTERLING CORRECTIONAL FACILITY.

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON MARCH 23, 2006, I  
MAILED THIS FOREGOING IN EASTERLING CORRECTIONAL  
FACILITY POST OFFICE TO THE FOLLOWING:

HUGH DAVIS DEPUTY ATTORNEY GENERAL ALABAMA BOARD  
OF PARDONS AND PAROLES P.O. BOX 302405  
301 S. UNION STREET MONTGOMERY, AL. 36130

~~TONY M. MURRAY #129256~~  
TONY MURRAY #129256  
EASTERLING CORR. FAC.  
200 WALLACE DRIVE  
CLIO, ALABAMA 36017